

Regular June Term, A.D., 1939.

WEDNESDAY, JUNE 14th., A.D., 1939.

Court met pursuant to adjournment.

Presents: Hon. J. Lee Dittert, County Judge; Wm. J. Reinicke, Henry O. Schmidt, C. M. Keer and Erwin Graeter, Commissioners; Ed. Batla, Clerk, and E. E. Reinecker, Sheriff.

IN THE MATTER OF DISCONTINUING
ROAD IMPROVEMENT WORK WITHIN THE
TERRITORIAL LIMITS OF THE CORPORA-
TION OF SAN FELIPE DE AUSTIN.

IN THE COMMISSIONERS' COURT
OF AUSTIN COUNTY, TEXAS.

REGULAR JUNE TERM, 1939.

On this, the 14th. day of June, 1939, the Commissioners' Court of Austin County, Texas, convened in regular session at a regular term thereof with all members present, came on to be considered the matter of determining some definite action to be taken by said Court in the case of The Corporation of San Felipe de Austin against the Commissioners of said County, in which said cause the Commissioners' Court of Austin County, Texas, is, by a writ of injunction duly issued out of the District Court of said County, restrained from laying out, surveying and designating and establishing a public road on or across certain lands alleged to belong to the said Corporation of San Felipe de Austin, and which said road, so sought to be laid out, surveyed, designated and established is more fully described by a former order of this Court adopting a report of the jury of view appointed for that purpose; and it appearing to the Court from the petition for injunction that said Corporation and its Town Council are active and have been for many years transacting all the business in the interest of the citizens living within the boundaries of said Corporation; that they, the Town Council, has full control of the laying out of streets, roads and alleys within the boundaries of said corporation, and the maintaining and upkeep of the same, and that the Commissioners' Court of Austin County, Texas, by reason thereof, has no jurisdiction to lay out, survey and establish any public roads within the boundaries of the said Corporation of San Felipe de Austin; and it further appearing to the Court that, since the pronouncement made by the Supreme Court of Texas in the year 1921 in which it is held that the corporate limits of said Corporation are co-extensive with the original five leagues of land granted by the Mexican Government to the town of San Felipe de Austin in 1824, and that by reason of the decision of said Supreme Court of Texas the Commissioners' Court of Austin County, Texas is bound to recognize the right of said Corporation, and its Town Council, to control of the laying out of streets, roads and alleys within its boundaries, and the maintenance and upkeep of the same therein, and that it should and must discontinue the establishment, improvement and maintenance of all roads, streets and alleys within the territorial limits of the said Corporation of San Felipe de Austin, so that there may be no interference with the assumption and exercise by the Town Council of the Corporation of San Felipe de Austin of the full control of the laying out of all streets, roads, alleys within the boundaries of said Town, as well as the maintenance and upkeep of the same;

It is therefore ordered, adjudged and decreed by the Court that the Commissioners' Court of Austin County, Texas, discontinue the establishment, improvement and maintenance of all roads, streets and alleys within the territorial limits of the Corporation of San Felipe de Austin, and more especially within the boundaries of the five leagues of land originally granted to the town of San Felipe de Austin, until such time as said Corporation of San Felipe de Austin, by and through its Town Council, may legally define and designate a smaller area within the boundaries of said five leagues of land aforesaid, as the territory embraced within the limits of said Corporation, and over which said territory the Corporation of San Felipe may and will assume and exercise full control of the establishment and maintenance of all roads, streets and alleys, and that all County Commissioners of said County take cognizance of this order.

It is further ordered that the Hon J. Lee Dittert, County Judge of Austin County, Texas, be and he is hereby directed to communicate to the Corporation of San Felipe the Court's action in the cause above mentioned, and that a copy of such communication be filed with this Court, and that same be entered in the minutes of this Court.

The above order being read in open Court, it was moved by Commissioner Reinicke, seconded by Commissioner Graeter, that same do pass. Whereupon, the question being called for, the following members present voted AYE: Commissioners Reinicke, Schmidt, Keer and Graeter, and the following voted NO: None.

Done in open Court, this 14th. day of June, 1939.

Attest: Ed. Batla
Clerk.

J. Lee Dittert,
County Judge, Austin County, Texas.

June 14, 1939.

To the Honorable Mayor and Members of the Town
Council of the Town of San Felipe de Austin,
San Felipe, Texas.

Gentlemen:

Pursuant to an order of the Commissioners Court of Austin County, Texas, made and entered at a meeting of said Court held on the 14th day of June, A. D. 1939, I am addressing to you the following communication:

On June 13th, 1939, Wm. J. Reinicke, Henry O. Schmidt, Erwin Graeter and C. M. Keer, as members of the Commissioners Court of Austin County, Texas, were served by Sheriff E. E. Reinecker with notices of an injunction having issued out of the District Court of Austin County, Texas, in the cause entitled The Corporation of San Felipe de Austin Vs. The Commissioners Court of Austin County, Texas, et al., Cause No. 7296, upon the Civil Docket of said Court. By the terms of said notices the above named members of the Commissioners Court of Austin County, Texas, are restrained from laying out, surveying and designating a public road on or across certain lands alleged to belong to the Corporation of San Felipe de Austin, the particular road in question being the road described in the report of the jury of view filed with the Commissioners Court of Austin County, Texas, and approved by said Court on April 10, 1939.

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The basis for the issuance of the injunction in said cause is a petition sworn to by the Honorable R. C. Kunze in the capacity of Mayor of the Town of San Felipe de Austin. Among other things said petition contains the following representations, to-wit: "that said Corporation and its Town Council are active and have been for many years transacting all the business in the interest of the citizens living within the boundaries of said Corporation; that they, the Town Council, has full control of the laying out of streets, roads and alleys within the boundaries of said corporation, and the maintaining and upkeep of the same." And further "that the said Commissioners Court of Austin County, Texas, has no jurisdiction to lay out, survey, describe and designate any public road within the boundaries of this Municipal Corporation, the Corporation of San Felipe de Austin; that said Municipal Corporation has an active governing body, the Town Council, who by law is given full control of such acts as are herein sought to be prohibited, and are sought to be done by the defendant, the Commissioners Court of Austin County, Texas."

The above statements, which are sworn to by your Mayor, must necessarily be and are accepted by the Commissioners Court of Austin County, Texas, as true. The Commissioners Court of Austin County also recognizes that the law gives and grants to municipal corporations the exclusive control and power to open, widen, alter, extend, establish, regulate, grade, clean and otherwise improve and maintain the streets, roads and alleys within the territorial boundaries of such corporation; and furthermore the Commissioners Court recognizes that the charter of the Corporation of San Felipe de Austin grants such power to the governing body of such Corporation. So far as the records reflect and so far as known to the membership of the present Commissioners Court of Austin County, Texas, the governing body of the Corporation of San Felipe de Austin has never exercised, in full, the powers which it admittedly possesses by law. Since the creation of Austin County more than a century ago the Commissioners Court of Austin County has on several occasions exercised the power of establishing and constructing roads within the boundaries of the town of San Felipe de Austin. The notice served upon the four members of the present Commissioners Court as above set forth was the first intimation that the Town Council of the Corporation of San Felipe de Austin had challenged the acts of the Commissioners Court of Austin County and that it was now asserting that the Commissioners Court has no jurisdiction and authority to lay out, survey, describe and designate any public road within the boundaries of said municipal corporation; and the Town Council of the Corporation of San Felipe de Austin having now in the manner above stated so apprised the Commissioners Court of Austin County, and the Commissioners Court of Austin County recognizing the right of the Town Council of the Corporation of San Felipe de Austin to exercise such powers and having no desire to usurp the powers of or interfere with the legal exercise of the powers by such municipal corporation, the said Commissioners Court of Austin County now hereby gives notice to the Town Council of the Corporation of San Felipe de Austin that it, the Commissioners Court of Austin County, Texas, has discontinued the establishment, improvement and maintenance of all roads, streets and alleys within the territorial limits of the Corporation of San Felipe de Austin so that there may be no interference with the assumption and exercise by the Town Council of the Corporation of San Felipe de Austin of the full control of the laying out of all streets, roads and alleys within the boundaries of said Town, as well as the maintenance and upkeep of the same.

In order that there may be no future encroachment by the Commissioners Court of Austin County upon the territory included within the boundaries of the Corporation of San Felipe de Austin it is very important that the boundaries of said municipal corporation be definitely established. The question of the boundaries of said Corporation is not altogether a new one, because it became an issue during the election for incorporation held in Sealy during the year 1938. The petition filed in the injunction suit above mentioned does not define the boundaries of the Corporation of San Felipe de Austin and the Commissioners Court must therefore look to the available records and the charter of such corporation and the construction placed upon such records and charter by our courts for a definite establishment of the boundaries of such municipal corporation. The records disclose that in the year 1824 the Mexican Government granted to the town of San Felipe de Austin five leagues of land. With reference to these five leagues of land, the location of which are well known to all parties concerned, the Supreme Court of Texas speaking through Chief Justice Phillips, on April 6, 1921, in the case of the Corporation of San Felipe de Austin vs. The State of Texas, reported in 229 S. W. 845-847, said: "Following the independence of Texas, the town of San Felipe de Austin was incorporated by a special act of the Congress of the Republic, in 1937 (Laws 1837, p. 21). This act confirmed to the municipality title to all the public property in it. This act was amended by one approved January 20, 1841 (Laws 1840-1841, p. 46), which also confirmed to the citizens of the municipality all the powers and property originally granted by the Mexican Government, and providing that the powers and jurisdiction of the town should extend over the whole territory belonging to it." The Court went on further to say: "These acts of the Republic are still in force".

The Commissioners Court of Austin County is not aware of any change having been made in the boundaries of the Corporation of San Felipe de Austin, the pronouncement made by the Supreme Court of Texas in 1921, and therefore finds itself constrained to recognize the corporate limits of the Corporation to be co-extensive with the original five leagues of land granted by the Mexican Government to the town of San Felipe de Austin in 1824 as determined by the Supreme Court of Texas.

The members of the Commissioners Court regret that this situation has arisen and assure the Town Council that whatever control the present Commissioners Court has exercised over the roads, streets and alleys within the boundaries of your municipal corporation was not exercised with any idea of usurping the powers of the Town Council of the Corporation, but rather because such powers had been exercised by our predecessors for so many years without any intimation from your Town Council that the exercise thereof was being questioned. The Commissioners Court desires to exercise only such jurisdiction and such powers as are legally conferred upon it, and finding itself challenged by the Corporation of San Felipe de Austin for exercising a power which it had been permitted to exercise without question since its organization over a century ago, the Court now issues this notice of the withdrawal of its officers, agents and employees from the territorial confines of the Corporation of San Felipe de Austin in so far as the matter of the establishment, construction and maintenance of roads, streets and alleys is concerned. And the Commissioners Court further issues notice that it will continue to recognize the corporate limits of said Corporation of San Felipe de Austin to be co-extensive with the five leagues of land granted by the Mexican Government to the town of San Felipe de Austin in 1824 as determined by the Supreme Court of Texas, until the Town Council in some legal manner established the boundaries to be otherwise.

The members of the Commissioners Court trust that this letter will be received in the kindly spirit in which it is written and that your Town Council and the Commissioners Court may in the future co-operate to the fullest extent and that each governing body in its own sphere of activity may work for the progress and betterment of our County.

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Inasmuch as we are reliably informed that Mr. Weldon Davis of Weimar, Texas, is the attorney representing the Corporation of San Felipe in the injunction matter we are sending to Mr. Davis a copy of this letter.

Respectfully yours,

J. Leo Dittert
County Judge, Austin County, Texas.

Whereupon the Court adjourned this June 14th., A.D., 1939.

J. Leo Dittert
County Judge of Austin County, Texas.